

**DRAFT**  
**Subject to Legal Review for Clarity and Consistency**  
**April 3, 2003**

**Chapter Five**

**Customs Administration**

**Article 5.1: Publication**

1. Each Party shall publish its customs laws, regulations, and administrative procedures on the Internet or a comparable computer-based telecommunications network.
2. Each Party shall designate one or more inquiry points to address inquiries from interested persons concerning customs matters, and shall make available on the Internet information concerning procedures for making such inquiries.
3. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment on such proposed regulations prior to their adoption.

**Article 5.2: Release of Goods**

1. Each Party shall:
  - (a) adopt or maintain procedures providing for the release of goods within a period of time no greater than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of arrival;
  - (b) adopt or maintain procedures allowing, to the extent possible, goods to be released at the point of arrival, without temporary transfer to warehouses or other locations;
  - (c) adopt or maintain procedures allowing the release of goods prior to, and without prejudice to, the final determination by its customs authority of the applicable customs duties, taxes and fees;<sup>1</sup> and
  - (d) otherwise endeavor to adopt or maintain simplified procedures for the release of goods.

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<sup>1</sup> A Party may require an importer to provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument, covering the ultimate payment of the customs duties for which the goods may be liable.

**DRAFT**  
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**April 3, 2003**

**Article 5.3: Automation**

Each Party's customs authority shall:

- (a) endeavor to use information technology that expedites procedures; and
- (b) in deciding on the information technology to be used for this purpose, shall take into account international standards.

**Article 5.4: Risk Assessment**

Each Party shall endeavor to adopt or maintain risk management systems that enable its customs authority to concentrate inspection activities on high risk goods and that simplify the clearance and movement of low risk goods.

**Article 5.5: Cooperation**

1. Each Party shall endeavor to provide the other Party with advance notice of any significant modification of administrative policy regarding the implementation of its customs laws that is likely to substantially affect the operation of this Agreement.
2. The Parties shall cooperate in achieving compliance with their laws and regulations pertaining to:
  - (a) the implementation and operation of the provisions of this Agreement relating to the importation of goods, including Chapter Three (National Treatment and Market Access for Goods), Chapter Four (Rules of Origin and Origin Procedures), and this Chapter;
  - (b) the implementation and operation of the Customs Valuation Agreement;
  - (c) restrictions or prohibitions on imports or exports; or
  - (d) such other customs matters as the Parties may agree.
3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, the Party may request that the other Party provide specific confidential information normally collected by the other Party in association with the importation of goods pertaining to trade transactions relevant to that activity. The Party shall make its request in writing, shall identify the requested information with sufficient specificity for the other Party to locate it, and shall specify the purposes for which the information is sought.

**DRAFT**  
**Subject to Legal Review for Clarity and Consistency**  
**April 3, 2003**

4. The other Party shall respond by providing any information that it has collected that is material to the request.

5. For purposes of paragraph 3, a reasonable suspicion of unlawful activity means a suspicion based on relevant factual information obtained from public or private sources, including:

- (a) historical evidence that a specific importer, exporter, producer or other enterprise involved in the movement of goods from the territory of one Party to the territory of the other Party has not complied with a Party's laws or regulations governing importations;
- (b) historical evidence that some or all of the enterprises involved in the movement from the territory of one Party to the territory of the other Party of goods within a specific product sector have not complied with a Party's laws or regulations governing importations; or
- (c) other information that the Parties agree is sufficient in the context of a particular request.

6. Each Party shall endeavor to provide the other Party with any other information that would assist in determining whether imports from or exports to the other Party are in compliance with the other Party's laws or regulations governing importations, in particular those related to the prevention of unlawful activities.

7. Each Party shall endeavor to provide the other with technical advice and assistance for the purpose of improving risk assessment techniques, simplifying and expediting customs procedures, advancing technical skills, and enhancing the use of technologies that can lead to improved compliance with laws and regulations governing importations.

8. Building on the procedures established in this Article, the Parties shall use best efforts to explore additional avenues of cooperation to enhance each Party's ability to enforce its laws and regulations governing importations, including by:

- (a) concluding a mutual assistance agreement between their respective customs authorities within six months after the date of entry into force of this Agreement; and
- (b) considering whether to establish additional channels of communication to facilitate the secure and rapid exchange of information and to improve

**DRAFT**  
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**April 3, 2003**

coordination on customs issues.

**Article 5.6: Confidentiality**

1. Where a Party providing information to the other Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of the information. The Party providing the information may, in accordance with its domestic law, require written assurances from the other Party that the information will be held in confidence, will be used only for the purposes specified in the other Party's request for information, and will not be disclosed without the Party's specific permission.
2. A Party may decline to provide information requested by the other Party where the other Party has failed to act in conformity with assurances provided under paragraph 1.
3. Each Party shall adopt or maintain procedures in which confidential information, including information the disclosure of which could prejudice the competitive position of the person providing the information, submitted in connection with the Party's administration of its customs laws shall be protected from unauthorized disclosure.

**Article 5.7: Express Shipments**

Each Party shall adopt or maintain separate, expedited customs procedures for express shipments, while maintaining appropriate customs control and selection, including procedures:

- (a) in which the information necessary for the release of an express shipment may be submitted, and processed by the Party's customs authority, prior to the arrival of the shipment;
- (b) allowing a shipper to submit a single manifest covering all goods contained in a shipment transported by the express shipment service, through, if possible, electronic means;
- (c) that, to the extent possible, minimize the documentation required for the release of express shipments; and
- (d) that, under normal circumstances, allow for an express shipment that has arrived at a point of entry to be released no later than six hours after the submission of the information necessary for release.

**Article 5.8: Review and Appeal**

**DRAFT**  
**Subject to Legal Review for Clarity and Consistency**  
**April 3, 2003**

Each Party shall ensure that with respect to its determinations on customs matters, importers in its territory have access to:

- (a) administrative review independent of the official or office that issued the determination; and
- (b) judicial review of the determination or decision taken at the final level of administrative review.

**Article 5.9: Penalties**

Each Party shall adopt or maintain measures that provide for the imposition of civil, administrative and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing tariff classification, customs valuation, rules of origin, and the entitlement to preferential tariff treatment under this Agreement.

**Article 5.10: Advance Rulings**

1. Each Party, through its customs authority, shall issue written advance rulings prior to the importation of a good into its territory at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party, on the basis of the facts and circumstances provided by the requester, concerning:

- (a) tariff classification;
- (b) the application of customs valuation criteria for a particular case, in accordance with the application of the provisions set forth in the Customs Valuation Agreement;
- (c) duty drawback;
- (d) whether a good qualifies as an originating good under Chapter Four (Rules of Origin and Origin Procedures); and
- (e) whether a good qualifies for duty-free treatment in accordance with Article 3.9 (Goods Re-entered after Repair or Alteration).

2. Each Party shall provide that its customs authority shall issue advance rulings within 150 days of a request, provided that the requester has submitted all necessary information.

3. Each Party shall provide that advance rulings shall be in force from their date of issuance,

**DRAFT**  
**Subject to Legal Review for Clarity and Consistency**  
**April 3, 2003**

or such other date specified by the ruling, for at least three years, provided that the facts or circumstances on which the ruling is based remain unchanged.

4. The issuing Party may modify or revoke an advance ruling where facts or circumstances warrant, such as where the information on which the ruling is based is false or inaccurate.

5. Where an importer claims that the treatment accorded to an imported good should be governed by an advance ruling, the customs authority may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which the advance ruling was based.

6. Each Party shall make its advance rulings publicly available, subject to confidentiality requirements in its domestic law, for purposes of promoting the consistent application of advance rulings to other goods.

7. If a requester provides false information or omits relevant circumstances or facts in its request for an advance ruling, or does not act in accordance with the ruling's terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, penalties, or other sanctions.

**Article 5.11: Implementation**

1. With respect to the obligations of Chile, Articles 5.1(1) and (2), 5.7(b), and 5.10(1)(b) shall enter into force three years after the date of entry into force of this Agreement.

2. Within 120 days after the date of entry into force of this Agreement, the Parties shall consult on the procedures that Chile needs to adopt to implement Article 5.10(1)(b) and on related technical assistance to be provided by the United States, and shall establish a work program outlining the steps needed for Chile to implement Article 5.10(1)(b).

3. Not later than 18 months after the date of entry into force of this Agreement, the Parties shall consult to discuss the progress made by Chile in implementing Article 5.10(1)(b) and to consider whether to engage in further cooperative efforts.